No. 83-996

In the Supreme Court of the United States

October Term, 1983

ARTHUR LANCE BIER,
Petitioner,

vs.

PAUL D. FLEMING and CHARLES I. ALATIS,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH JUDICIAL CIRCUIT

RESPONDENT, CHARLES I. ALATIS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the decision of the Sixth Circuit Court of Appeals holding that a private individual did not act under color of state law within the ambit of 42 U.S.C. Section 1983, is correct and not in conflict with a decision of the Third Circuit Court of Appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statute

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GROUNDS FOR JURISDICTION

Respondent agrees that Petitioner has timely filed with this Honorable Court his Petition for Certiorari.

STATEMENT OF CASE

Painesville Raceway, Inc., an Ohio corporation, was at all times material to this proceeding a licensed permit holder authorized by the laws of the State of Ohio to

conduct harness horse racing meets at Northfield Park, Northfield, Ohio.

Respondent, Charles I. Alatis, was the President and General Manager of Painesville Raceway, Inc.

The harness horse racing meet commenced on August 12, 1977, and concluded on November 12, 1977.

On August 8, 1977, Respondent, Charles I. Alatis, notified Petitioner that he had failed to submit an application for stall space in the upcoming meet and, therefore, would have to vacate stall space utilized by Petitioner in a prior meet. Additionally, Petitioner was advised that it had come to the attention of Respondent, Charles Alatis, that Petitioner did not have trainer responsibility and, therefore, Painesville Raceway, Inc. classified Petitioner as a catch-driver. Painesville Raceway did not permit catch-drivers and Petitioner was, accordingly, refused entry to the Northfield Park premises and his name was removed from the August 12, 1977 program. By virtue of a temporary restraining order from the district court, Petitioner participated in the entire Painesville Raceway meet.

The district court held that Respondent, Alatis' conduct constituted action under color of state law pursuant to 42 U.S.C., Section 1983.

The Court of Appeals held that Petitioner failed to demonstrate the requisite degree of state action necessary to maintain a claim for relief under 42 U.S.C., Section 1983, and, accordingly, reversed the district court's decision and order the complaint dismissed.

Respondent, Charles I. Alatis, respectfully requests this Honorable Court to deny certiorari.

ARGUMENT IN OPPOSITION TO THE GRANTING OF CERTIORARI

Contrary to the assertions of Petitioner, Respondent, Charles I. Alatis, respectfully represents that the decision of the Sixth Circuit Court of Appeals is correct under law and not in conflict with a decision of the Third Circuit Court of Appeals. Moreover, Respondent submits that the Sixth Circuit Court of Appeals' decision is consistent with the decisions of other circuits as well as decisions by this Honorable Supreme Court.

In the case at bar, the Sixth Circuit Court of Appeals clearly distinguished its decision from the Third Circuit decision in *Fitzgerald v. Mountain Laurel Racing, Inc.*, 607 F.2d 589 (3d Cir. 1979), *cert. denied*, 446 U.S. 956 (1980) (Petitioner's Appendix 49-51). The Sixth Circuit specifically found that the factors which led to the decision of the Third Circuit were absent in the case at bar (Petitioner's Appendix 50).

Moreover, Respondent respectfully submits that the decision of the Sixth Circuit is consistent with the following decisions: *Fulton v. Hecht*, 545 F.2d 540 (5th Cir.), *cert. denied*, 430 U.S. 984 (1977) (cited by the Sixth Circuit); *Martin v. Monmouth Park Jockey Club*, 145 F. Supp. 439 (D.N.J. 1956), *aff'd*, 242 F.2d 344 (3d Cir. 1957) (reaffirmed by the Third Circuit in *Fitzgerald, supra* at 597); and *Evans v. Arkansas Racing Commission*, 606 S.W.2d 578 (Supreme Court of Arkansas, 1980), *cert. denied*, 451 U.S. 910, 101 S. Ct. 1980 (1981).

In conclusion, Respondent, Charles I. Alatis, submits that the decision of the Sixth Circuit Court of Appeals is correct under law and not in conflict with the decision of the Third Circuit Court of Appeals.

Accordingly, Respondent, Charles I. Alatis, urges this Honorable Supreme Court to deny the Petition for Certiorari.

Respectfully submitted,

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